
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 330

Amendment to the Municipal Code Regarding Composition of the DPWG

OVERVIEW

In response to a suggestion from the City's Independent Consultant to augment a Kroll Report recommendation to modify the composition of the Disclosure Practices Working Group (DPWG), the City Council voted on April 30, 2007 to direct the City Attorney to prepare an ordinance amending the Municipal Code to facilitate the recommended changes to DPWG. The proposed ordinance primarily changes DPWG provisions of the Municipal Code regarding composition of the working group. This report describes the recommended membership changes and highlights other aspects of the DPWG noted within the Municipal Code.

"As reconstituted, with the DPWG reporting to the City's new Audit Committee, as we also recommend, the DPWG can render meaningful assistance to the City (and particularly to the Mayor and CFO) in discharging their obligations to consider the materiality of information and to determine the City's disclosure responsibilities, consistent with best practices observed in the private sector."
– Kroll Report

FISCAL/POLICY DISCUSSION

Recommended Change in the Composition of DPWG

The Kroll Report issued on August 8, 2006 recommended continuation of the DPWG, but recommended a change in its composition. Citing the "enormous responsibility of the

CFO to ensure the accuracy of the City’s financial statements”, Kroll recommended that the CFO be a member of the DPWG (the CFO was already participating in place of a Deputy City Manager of Financial Management) and serve as its chair. The Municipal Code currently indicates that the City Attorney serve as chair of the DPWG.

Given concerns over who might control DPWG as chair, the Mayor, City Attorney and Independent Consultant Stan Keller discussed alternatives to best fit the City’s successful working group model and still satisfy the intention behind Kroll’s recommendation. In a memorandum to the City dated April 20, 2007, the Independent Consultant recommended a new composition for the DPWG. The Independent Consultant recommended that the Deputy City Attorney for Finance and Disclosure (currently Mark Blake) serve as the Disclosure Coordinator with defined administrative responsibilities similar to those of a chair. A key component of the Independent Consultant’s recommendation was that every member or ex-officio participant of the DPWG has the ability to place items on the agenda. The proposed changes to the composition of the DPWG are provided below:

Current DPWG Composition

City Attorney
Deputy City Attorney - Finance and Disclosure
Deputy City Manager – Financial Management
City Treasurer
City Auditor and Comptroller
City’s Outside Disclosure Counsel (voting)
Deputy City Attorney – MC 22.0303
Deputy City Attorney – MC 22.0304

Proposed DPWG Composition

City Attorney
DCA – Finance and Disclosure
Chief Financial Officer
Debt Management Director
City Auditor (Internal Auditor)

City Disclosure Counsel (ex officio)
Independent Budget Analyst (ex officio)

In discussing the Independent Consultant’s recommendation, it was noted that the DPWG was a collaborative, consensus-based group that had been working well. The Independent Consultant suggested that the City strive to maintain a collaborative process and focus on the effectiveness of the DPWG in addressing the City’s disclosure requirements. Last spring, the CFO, City Attorney and IBA all agreed to the changes proposed by the Independent Consultant. The proposed ordinance before the City Council incorporates these changes.

Council President Peters asked the Independent Consultant, charged with monitoring the City’s fiscal reform for the SEC, if the proposed deviation from the specific Kroll recommendation would satisfy the SEC. The Independent Consultant responded that he strongly believed his recommendation would satisfy SEC expectations. Additionally, the Independent Consultant indicated that “the fair way to approach the Kroll recommendations is to look at the substance of what they are recommending, and then make sure that it works in this environment and for this City.”

Other Notable DPWG Provisions in the Municipal Code

- The Purpose and Intent of the DPWG is to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City or by its related entities. The IBA notes that the DPWG focuses on securities disclosure and does not necessarily review other aspects of a proposed debt issuance (debt structure, marketing approach, pricing, etc.). The Debt Management Department, working with hired financial consultants, develops recommendations for City Council consideration in this regard, excluding securities issued by the Housing Authority and Redevelopment Agency. The Deputy City Attorneys for Finance and Disclosure can also be a resource for the City Council for other aspects of proposed debt.
- The DPWG shall meet as often as necessary to fulfill its obligations, but not less than once a month. A schedule was recently adopted by the DPWG establishing the first and third Wednesday of every month for meetings, with additional scheduling flexibility if needed. DPWG Rules and Regulations allow members and participants to assign appropriate designees to the meetings on their behalf on a limited basis. The Independent Consultant, or his designee, has participated in recent DPWG meetings.
- The DPWG shall conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, the DPWG shall submit a written Annual Report on the Group's work and findings to the City Council and to the Audit Committee on or before December 15th of each year. The 2007 Annual Report of the DPWG (the 3rd Report since DPWG inception) was distributed on December 15, 2007 and is anticipated to be presented to the Audit Committee on January 28, 2008. The Mayor and City Auditor are required to a) certify in writing to the City Council within 14 calendar days that they have reviewed the Annual Report and b) provide the City Council with any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.
- In connections with the approval of offering documents for securities by the City Council, the Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This certification requirement is meant to apply to public securities offerings excluding securities issued by the Housing Authority and Redevelopment Agency.

CONCLUSION

The proposed ordinance before the City Council modifies DPWG provisions in the Municipal Code to incorporate recommendations from the City's Independent Consultant. Although this proposal modifies a Kroll recommendation, the Independent Consultant has assured the City Council that it fulfills the intent of the Kroll recommendation and will satisfy the SEC. Last spring, the Mayor, City Attorney and IBA expressed support for the proposal that calls for the Deputy City Attorney for Finance and Disclosure to serve as Disclosure Coordinator rather than the CFO. The proposed ordinance incorporates the recommendation and direction from the City Council on April 30, 2007.

"The DPWG issued its first annual report addressing the City's disclosure practices and controls on November 1, 2005. We endorse the continuation of the DPWG, and recommend that it report to the new Audit Committee."
– Kroll Report

However, while contrary to both Kroll and the Independent Consultant's recommendation and Council's previous action, in our March 1, 2007 (IBA #07-27) report, we recommended that the City Auditor serve as an ex officio member of DPWG as opposed to a voting member. Professional audit organizations consistently concur that auditors should not function in the role of a manager including making management decisions or performing management functions.

This report also highlights key DPWG provisions from the Municipal Code related to its purpose, meetings, annual reporting and certifications. In particular, the IBA believes that the Annual Report is a useful document for apprising the City Council of DPWG activities over the past calendar year and issues/initiatives to be addressed going forward. The Annual Report will be presented and discussed at the Audit Committee meeting on January 28, 2008. The IBA supports the proposed ordinance and the continuation of a collaborative DPWG as a means of ensuring City compliance with federal and state securities laws.

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Jeff Kawar
Fiscal & Policy Analyst

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APPROVED: Andrea Tevlin
Independent Budget Analyst